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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 IN THE MATTER OF:

10
11 PETITION TO AMEND ER 8.4,
12 RULE 42, ARIZONA RULES OF
13 THE SUPREME COURT
14

Supreme Court No. R-10-0031

**David P. Brooks' Comment to Petition
to Amend ER 8.4, Rule 42, Arizona
Rules of the Supreme Court**

15 The undersigned attorneys hereby comment to the Petition to Amend ER
16 8.4, Rule 42, Arizona Rules of the Supreme Court. The State Bar of Arizona has
17 petitioned this Court to amend ER 8.4, Rule 42, Arizona Rules of the Supreme
18 Court, by adding the following language: "It is professional misconduct for a
19 lawyer to knowingly manifest bias or prejudice based upon race, gender, religion,
20 national origin, disability, age, sexual orientation, gender identity or expression,
21 or socioeconomic status in the course of representing a client when such actions
22 are prejudicial to the administration of justice; provided, however, this does not
23 preclude legitimate advocacy when such classification is an issue in the
24 proceeding."

25 For the reasons set forth below, the undersigned concerned attorneys
26 oppose this proposed revision because of the inherent impingement the proposed

1 language would place on lawyers in the course of representing clients. While it
2 generally is true that lawyers could address the proposed language by making a
3 decision about who to represent at the beginning of the representation, it is also
4 possible that a person's sexual orientation, gender identity or expression might
5 not be an issue pertinent to matter intake and could later become known or may
6 become an issue in the case. In such circumstances, counsel who might not feel
7 comfortable in representing a client whose sexual orientation or gender identity is
8 different (whether based on closely held religious values or beliefs or for other
9 reasons) from the lawyer would be faced with engaging in defined unprofessional
10 conduct if the lawyer wanted to withdraw from the representation. The lawyer
11 should not be placed in that conundrum, particularly where the free exercise of
12 religion comes into play. The lawyer should be free to withdraw so long as doing
13 so would not otherwise violate the Rules of Professional Conduct as they already
14 exist.

15 **CONCLUSION**

16
17 For the foregoing reasons, the undersigned attorneys oppose the State Bar's
18 proposed amendments to the Arizona Rules of the Supreme Court.

19
20 Respectfully submitted this 1st day of November, 2011.

21
22 /s/ David P. Brooks

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25 Electronic copy filed with the Clerk
26 of the Supreme Court of Arizona
this 1st day of November, 2011,

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By: David P. Brooks

A copy was mailed to:
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this 1st day of November, 2011,

By: /s/ Carolyn Brooks